



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, DC 20240

APR 2 2012

Re: **Foley Building, 60 West Water Street, Harrisonburg, Virginia**
Project Number: 19744

Dear

I have concluded my review of your appeal of the decision of Technical Preservation Services (TPS), denying certification of the rehabilitation of the property cited above. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank _____ for meeting with me in Washington on March 8, 2012, and for providing a detailed account of the project.

After careful review of the complete record for this project, including the two reflected ceiling plan drawings submitted by _____ on March 19, 2012, I have determined that the rehabilitation of the Foley Building is not consistent with the historic character of the property and the historic district in which it is located, and that the project does not meet the Secretary of the Interior's Standards for Rehabilitation (the Standards). Therefore, the denial issued on February 24, 2010, by TPS is hereby affirmed. However, I have further determined that the project could be brought into conformance with the Standards, and thereby be certified, if the corrective measures described below are undertaken.

Built in 1938, the Foley Building is located in the Harrisonburg Downtown Historic District. It was certified as contributing to the significance of the district on March 15, 2007. In a letter dated April 24, 2009, TPS found that the proposed rehabilitation of this "certified historic structure" would meet the Standards provided that several conditions were met. However, photographs submitted with the Request for Certification of Completed Work showed that the completed work did not comply with these conditions, and that the overall rehabilitation did not comply with the Standards. TPS cited the infill of several openings on the facade, the construction of a new addition across the rear, and the placement of mechanical equipment and a railing on the roof. Interior treatments at issue include the removal of the ceiling to reveal floor joists and the insertion of exposed mechanical ductwork.

In general, I agree with TPS that these treatments have diminished the historic character of the Foley Building, and cause the overall impact of the rehabilitation to contravene Standards 2, 5, and 9. Standard 2 states: "*The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*" Standard 5 states: "*Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.*" Standard 9 states: "*New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing,*

size, scale, and architectural features to protect the historic integrity of the property and its environment."

With regard to the new addition at the rear, and the new rooftop ventilation and mechanical equipment, I have determined that they do not significantly diminish the overall historic character of the building and thus are not cause for denial of certification. The new addition is not so large as to lessen the primacy of the historic building in its environment, nor is its design incompatible with this mid-twentieth century structure. The new rooftop equipment, while visible from the alley side, is not as prominent as the railing at the building's parapet. Accordingly, these two elements have not factored into my decision.

With regard to infilling door and window openings along the street facade with cementitious panels, I have determined that the infill has greatly altered the building's facade, which is its primary character-defining feature and the primary determinant of its contribution to the surrounding historic district. In addition, the new railing on the roof edge adds a discordant element above the historic stepped parapet that caps the highly visible alley facade. These exterior treatments bring the project into conflict with Standards 2 and 9, quoted above.

With regard to removing finished ceilings on both the first and second floors to reveal the structure and expose the mechanical ductwork, I have determined that these changes from the originally proposed design have given the spaces affected an industrial character, which causes the rehabilitation to fall short of Standards 2 and 5, quoted above.

Although the rehabilitation cannot be approved in its current state, I have further determined it could be brought into conformance with the Standards, and thus achieve the certification you seek, if several remedial changes were made.

With regard to the exterior, the infilled, single-width, door openings on the building's street facade must be modified to resemble wood-framed openings with doors (the doors need not be functional). At the beginning of the rehabilitation, the westernmost entrance was a contemporary glass storefront flush with the facade plane. During the rehabilitation, the entrance was inset so that the door will not swing open onto the sidewalk, and a second door was installed to create a vestibule. As part of this work, the formerly glazed opening was reduced by approximately one-fourth in width and the glass panels flanking the door were replaced with the same solid cementitious panels which infilled the other openings. I have determined that these changes to the entrance are marginally acceptable except for the solid panels adjacent to the glass doors, which substantially alter the original transparent character of the entrance. To comply with the Standards, the solid panels next to both new doors must be replaced with glass panels to match the glass doors, thus emulating the transparent character of the former entrance. The solid panels perpendicular to the street and flanking the inset entrance must be painted a compatible color. Lastly, the rooftop railing must be removed. At the appeal meeting we discussed making the railing detachable so that it will be erected only when the rooftop mechanical equipment is being serviced. I find this solution to be acceptable.

With regard to the interior, the finished ceilings must be replaced to restore the historic character of the west side of the bar area on the first floor and the two front dining rooms on the second floor, essentially matching the finish conditions proposed in the original application. The exposed area over the bar—proposed in the original application—can remain. If there are instances where some of the ductwork is below the height of the reinstalled ceiling, it must be painted to match the ceiling.

With these modifications, I have determined that the overall impact of the rehabilitation on the property will comply with the Standards.

Finally, I have considered the statements by —project architects— that neither you nor —received the April 24, 2009, letter from TPS specifying conditions for ensuring that the proposed rehabilitation would meet the Standards. This is regrettable. However, I note that the letter was properly addressed based on the Part 2 Application and accompanying Amendment Sheet, both dated January 3, 2009, that bear your signature. Also regrettable are the clerical errors the TPS reviewer made by only checking the approval box and signing the Amendment Sheet, and not checking the box on the Part 2 Application approving the rehabilitation “if the attached conditions are met,” checking the “See Attachments” box at the bottom, and signing, that form. Nevertheless, I find that these errors are not sufficiently grave as to constitute a “prejudicial procedural error” that “legally compels issuance of the requested certification.” (36 CFR §67.10).

If you choose to proceed with the corrective measures described above, you may secure certification of the rehabilitation by filling out the enclosed Request for Certification of Completed Work and submitting it with photographs of the completed work through the Virginia Department of Historic Resources to TPS, Attention: Mr. Michael Auer. Note that this project will remain ineligible for the tax incentives until it is designated a “certified rehabilitation” following completion of all additional work.

As Department of the Interior regulations state, my decision is the final administrative decision with respect to the February 24, 2010, denial that TPS issued regarding rehabilitation certification. A copy of this decision will be provided to the Internal Revenue Service. Questions concerning specific tax consequences of this decision or interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

Sincerely,



John A. Burns, FAIA
Chief Appeals Officer
Cultural Resources

cc: SHPO-VA
IRS